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COMMISSION ON HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 27 March 1998, at 3 p.m.

Chairman: Mr. SELEBI (South Africa)

later: Mr. GALLEGOS CHIRIBOGA (Ecuador)

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GE.98-11412 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF THE DRAFT RESOLUTIONS RELATING TO AGENDA ITEMS 4 AND 7

Draft resolutions relating to item 4 (E/CN.4/1998/L.3, L.5 and L.7)

1. Mr. LAMDAN (Observer for Israel) said that the draft resolutions E/CN.4/1998/L.3, L.5 and L.7 confirmed that Israel could not obtain a fair hearing in the Commission. He pointed out that Israel was the only country to which a whole agenda item was devoted, which was discriminatory in itself. After several hours of attacks and abuse, the Israeli delegation had been able to speak only for 10 minutes and, when it referred to Palestinian violations of human rights in the occupied territories, the Observer for Palestine had immediately exercised his right of reply in order to protest. The mandate of the Special Rapporteur had still not been modified and no reference had been made in draft resolution L.3 to the gross violations of human rights committed by the Palestinians. Any positive references to the peace process in the Middle East had been deleted and the one consensual resolution that used to be submitted by the sponsors of the Oslo process was lacking since it would have been used to attack Israel, as had happened at the fifty-second session of the General Assembly of the United Nations.

2. The Israeli delegation deplored even more strongly draft resolution L.7, submitted by the European Union, the language of which had been toughened and the text of which had been expurgated of the few elements of balance that appeared in the resolutions of previous years. His delegation believed that the Commission was exceeding its competence, showing partiality and politicizing a complex and extremely difficult question which deserved a different form of treatment.

3. Mrs. RUBIN (United States of America), referring to draft resolutions E/CN.4/1998/L.3, L.5 and L.7, said that it should not be the Commission's role to prejudge the permanent status that the Palestinians and Israelis had undertaken to discuss. The United States delegation would vote against those draft resolutions due to their partiality and the risk that they would further complicate the Middle East peace process.

4. The United States Administration, at the highest level, was doing its utmost to put the Middle East peace process back on track with a view to the establishment of a just, comprehensive and lasting peace not only between the Israelis and the Palestinians but also between Israel and Syria and between Israel and Lebanon. Everyone should endeavour to encourage the negotiations between the Palestinians and the Israelis. To that end, the United States had called upon the parties concerned to refrain from taking unilateral measures of a provocative nature. It had stated on numerous occasions that the establishment of new settlements in the West Bank would not further the peace process.

5. The United States continued to believe that agenda item 4 should be eliminated and that the discussions concerning Israel, if necessary, should be held under agenda item 10. Item 4 was the only item wholly devoted to a single country, which was contrary to the principles of justice and equity that should guide the Commission's deliberations.

Draft resolution E/CN.4/1998/L.3 (Question of the violation of human rights in the occupied Arab territories, including Palestine)

6. Mr. ZAHRAN (Observer for Egypt), presenting the draft resolution, said that the Commission expressed therein its great concern at the Israeli refusal to abide by the United Nations resolutions affirming the applicability of the Fourth Geneva Convention to the occupied territories. It reaffirmed the need to convene a conference of the High Contracting Parties to that Convention (para. 6). It called upon Israel to withdraw from the occupied territories (para. 9) and requested the Secretary-General to report to it, at its fifty-fifth session, on the implementation of the resolution by the Government of Israel (para. 10). Finally, it decided to consider the question, as a matter of high priority, at the 1999 session under the same agenda item. He hoped that the draft resolution would be adopted by consensus.

7. Mrs. KLEIN (Secretary of the Commission) announced that Malaysia had co-sponsored the draft resolution.

8. Mrs. GLOVER (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the European Union, said that the latter could not support draft resolution L.3, since insufficient time had been allowed for the sponsors of the text to consider the amendments proposed by the European Union. She hoped that the sponsors would take those proposals into consideration in order to obtain the European Union's support at the Commission's fifty-fifth session.

9. Mr. RAMLAWI (Observer for Palestine), pointed out that Mr. Kofi Annan, the Secretary-General of the United Nations, had called upon Israel to cease taking United Nations resolutions lightly and had emphasized that the Middle East peace process was based on the principle of "land for peace". He regretted that that principle was not being respected by the Israeli Government and noted that the Observer for Israel had not denied that the rights of the Palestinians were being violated. Moreover, the representative of the United States had spoken of the efforts made to put the peace process back on track in the full knowledge that it was the Israeli Government which was obstructing that process at the risk of provoking further wars in the region.

10. The CHAIRMAN said that the United States delegation had requested that the draft resolution be put to a vote.

11. At the request of the representative of Cuba, a roll-call vote was taken on draft resolution E/CN.4/1998/L.3.

12. Bhutan, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Bangladesh, Bhutan, Botswana, Brazil, Cape Verde, Chile, China, Congo, Cuba, Democratic Republic of the Congo, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mexico, Morocco, Mozambique, Nepal, Pakistan, Peru, Philippines, Republic of Korea, Rwanda, Senegal, South Africa, Sri Lanka, Sudan, Tunisia, Uganda.

Against: United States of America.

Abstaining: Argentina, Austria, Belarus, Canada, Czech Republic, Denmark, Ecuador, El Salvador, France, Germany, Guatemala, Ireland, Italy, Japan, Luxembourg, Poland, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay.

13. Draft resolution E/CN.4/1998/L.3 was adopted by 31 votes to 1, with 20 abstentions.

Draft resolution E/CN.4/1998/L.5 (Human rights in the occupied Syrian Golan)

14. Mr. AL-HUSSAMI (Observer for the Syrian Arab Republic) said that the text of the draft resolution was similar to that of the resolution adopted by the Commission in 1997, since the Israeli occupation was continuing and the violations of the rights of Syrian citizens, far from having ceased, were increasing. Israel was still refusing to comply with the resolutions of the Security Council and General Assembly of the United Nations and the Commission on Human Rights and was likewise refusing to accept just and equitable conditions for peace, thereby delaying the peace process. He hoped that, with a view to saving that process, the members of the Commission, and particularly the countries which were championing the cause and seeking to preserve the credibility of human rights, would adopt the draft resolution.

15. Mrs. KLEIN (Secretary of the Commission) announced that Malaysia and Pakistan had co-sponsored the draft resolution.

16. Mrs. GLOVER (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the European Union, regretted that there had been insufficient time to discuss with the sponsors of the draft resolution the amendments that could have been made to the text that had been presented. The European Union believed that the wording of the draft resolution was too strong in comparison with the text of the other resolutions adopted concerning the Syrian Golan, particularly General Assembly resolution 52/68 which the European Union had approved. If amendments were made in order to bring the draft into line with General Assembly resolution 52/68, the European Union would be able to vote in favour of that draft resolution at the Commission's fifty-fifth session.

17. At the request of the representative of the Syrian Arab Republic, a roll-call vote was taken on draft resolution E/CN.4/1998/L.5.

18. Tunisia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Belarus, Bhutan, Botswana, Cape Verde, Chile, China, Congo, Cuba, Democratic Republic of the Congo, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mexico, Morocco, Mozambique, Nepal, Pakistan, Philippines, Republic of Korea, Russian Federation, Rwanda, Senegal, South Africa, Sri Lanka, Sudan, Tunisia, Uganda, Venezuela.

Against: United States of America.

Abstaining: Austria, Brazil, Canada, Czech Republic, Denmark, Ecuador, El Salvador, France, Germany, Guatemala, Ireland, Italy, Japan, Luxembourg, Peru, Poland, Ukraine, United Kingdom of Great Britain and Northern Ireland Uruguay.

19. Draft resolution E/CN.4/1998/L.5 was adopted by 33 votes to 1, with 19 abstentions.

Draft resolution E/CN.4/1998/L.7 (Israeli settlements in the occupied Arab territories)

20. Mrs. Glover (United Kingdom of Great Britain and Northern Ireland), presenting the draft resolution on behalf of the European Union and the other co-sponsors, said that the repeated appeals that had been made to the Israeli Government to put an end to the construction work at Jabal Abu Ghneim/Har Homa in the occupied West Bank and to the expansion of the settlements in the occupied territories, including Jerusalem, had still not met with any response. The European Union believed that the settlements were not only illegal under international law but also detrimental to the peace process. For the negotiations to progress, both parties should refrain from taking counter-productive measures. In his report (E/CN.4/1998/17), the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 had noted that the intensified construction and expansion of Israeli settlements was undoubtedly the most worrying factor that had exacerbated the human rights situation in the territories. The total cessation of settlement construction would help to restore confidence in the peace process and put it back on track.

21. Mrs. KLEIN (Secretary of the Commission) announced that Bangladesh, Liechtenstein, Madagascar, the Russian Federation and South Africa had co-sponsored the draft resolution.

22. At the request of the delegation of the United States of America, the Chairman put the draft resolution to a vote.

23. Draft resolution E/CN.4/1998/L.7 was adopted by 51 votes to 1.

24. Mr. SUAREZ (Venezuela) requested that the summary record of the meeting should indicate that, had his delegation been present during the vote on draft resolution E/CN.4/1998/L.3, it would have voted in favour.

Draft resolutions relating to agenda item 7 (E/CN.4/1998/L.4, L.6 and L.8)

Draft resolution E/CN.4/1998/L.4 (Situation in occupied Palestine)

25. Mr. MORJANE (Tunisia), presenting the draft resolution, said that it emphasized the purposes and principles enshrined in the Charter of the United Nations, and particularly Articles 1 and 55 which affirmed the right of peoples to self-determination. It also referred to the various General Assembly resolutions which confirmed and defined the inalienable rights of the Palestinian people, particularly their right to

self-determination without foreign interference and their right to establish an independent State on their national soil, as well as the Commission's resolution 1997/4 on that subject. The aim of the peace process was not only to bring about a just, comprehensive and lasting peace in the Middle East, but also to enable the Palestinian people to exercise their right of self-determination and Israel was therefore called upon to fulfil its obligations under the Charter of the United Nations and the principles of international law and to withdraw from the Palestinian territories, including East Jerusalem, and the other Arab territories that it had been occupying by force since 1967. Finally, provision was made for the Commission to consider the situation in occupied Palestine, as a matter of high priority, at its fifty-fifth session. The Tunisian delegation thanked all the delegations that had participated in the consultations in which that draft resolution had been drawn up and hoped that it would be adopted by consensus.

26. Mrs. KLEIN (Secretary of the Commission) announced that Malaysia and South Africa had co-sponsored the draft resolution.

27. Mr. LAMDAN (Observer for Israel) said that the comments that he had made concerning the draft resolutions relating to agenda item 4 also applied to the draft resolution under consideration. However, he emphasized that, in that instance, the attempt to politicize the question and prejudge the outcome of the final status negotiations was even more flagrant.

28. Mr. RAMLAWI (Observer for Palestine) pointed out that, as long as the Palestinian people were unable to exercise their right of self-determination, there would never be peace in the Middle East, as the representative of Israel was well aware. That draft resolution merely reaffirmed the right of all peoples, and particularly of the Palestinian people, to self-determination.

29. Mrs. GLOVER (United Kingdom of Great Britain and Northern Ireland) informed the Commission that, unfortunately, the member countries of the European Union could not support that draft resolution since insufficient time had been allowed to settle some details with the sponsors in order to enable them to modify their position.

30. The CHAIRMAN said that the United States delegation had requested that the draft resolution be put to a vote.

31. At the request of the representative of Tunisia, a roll-call vote was taken on draft resolution E/CN.4/1998/L.4.

32. The Democratic Republic of the Congo, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Bangladesh, Belarus, Bhutan, Botswana, Brazil, Cape Verde, Chile, China, Congo, Cuba, Democratic Republic of the Congo, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mexico, Morocco, Mozambique, Nepal, Pakistan, Peru, Philippines, Republic of Korea, Russian Federation, Rwanda, Senegal, South Africa, Sri Lanka, Sudan, Tunisia, Uganda, Venezuela.

Against: United States of America.

Abstaining: Argentina, Austria, Canada, Czech Republic, Denmark, Ecuador, El Salvador, France, Germany, Guatemala, Ireland, Italy, Japan, Luxembourg, Poland, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay.

33. Draft resolution E/CN.4/1998/L.4 was adopted by 34 votes to 1, with 18 abstentions.

Draft resolution E/CN.4/1998/L.6 (Question of the Western Sahara)

34. The CHAIRMAN said that he was the sponsor of that draft resolution. If there were no objection, he would take it that the Commission had adopted it without a vote.

35. It was so decided.

Draft resolution E/CN.4/1998/L.8 (The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination)

36. Mr. REYES RODRIGUEZ (Cuba), presenting the draft resolution on behalf of its sponsors, to which Cameroon, Ethiopia, India and Nigeria had been added, said that its text reflected that of resolution 52/112, adopted by the General Assembly on 12 December 1997, and condemned not only the activities of mercenaries themselves, but also the States that permitted or tolerated the recruitment, financing, training, assembly, transit and use of mercenaries in their territory. Note was taken of the report on that question (E/CN.4/1998/31) and all States that had not yet done so were called upon to sign or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Provision was also made for a three-year extension of the mandate of the Special Rapporteur and the Secretary-General was requested to provide the latter with all necessary assistance. The Secretary-General was also requested to invite Governments to propose a clearer legal definition of mercenaries.

37. He then read out two amendments that the sponsors had made to the text of the draft, consisting of the addition of two new paragraphs 4 bis and 4 ter, which read as follows:

4 bis "Welcomes the cooperation extended by those countries that have invited the Special Rapporteur of the Commission on Human Rights on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination;"

4 ter "Welcomes the adoption by some States of national legislation that restricts the use of mercenaries;"

The Cuban delegation hoped that the Commission would adopt that draft resolution by consensus.

38. Mrs. KLEIN (Secretary of the Commission) first of all informed the Commission that Ghana and Madagascar had co-sponsored the draft resolution. Then, presenting the draft resolution's administrative implications and its implications for the programme budget, in accordance with Rule 28 of the Rules of Procedure, she indicated that an amount of $90,700 had been provided for under section 22 of the programme budget for the biennium 1998-1999 to cover the costs related to the extension of the Special Rapporteur's mandate during the first two years. The amount needed to cover the Special Rapporteur's expenses during the third year would be considered within the context of the draft programme budget for the biennium 2000-2001.

39. The CHAIRMAN announced that the delegation of the United Kingdom had requested that the draft resolution be put to a vote.

40. Mrs. RUBIN (United States of America), explaining her vote before the vote, said that her delegation would vote against draft resolution L.8, primarily because the question with which it dealt had already received sufficient attention from the Commission and did not merit the same priority as other more important questions on its agenda. Moreover, there was a convention on that subject which had been opened for signature and ratification by States Members of the United Nations. Finally, the draft resolution under consideration duplicated a virtually identical resolution which the General Assembly had adopted at its 1997 session. The United States delegation also regretted that the sponsors of the draft had not held consultations with other delegations. That course of action did not facilitate the transparency that had been advocated by numerous delegations.

41. At the request of the representative of Cuba, a roll-call vote was taken on draft resolution E/CN.4/1998/L.8.

42. Canada, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Bangladesh, Bhutan, Botswana, Brazil, Cape Verde, Chile, China, Congo, Cuba, Democratic Republic of the Congo, Ecuador, El Salvador, Guatemala, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mexico, Morocco, Mozambique, Nepal, Pakistan, Peru, Philippines, Russian Federation, Rwanda, Senegal, South Africa, Sri Lanka, Sudan, Uganda, Uruguay, Venezuela.

Against: Austria, Canada, Denmark, Germany, Japan, Luxembourg, Poland, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Argentina, Belarus, Czech Republic, France, Ireland, Italy, Republic of Korea, Ukraine.

43. Draft resolution E/CN.4/1998/L.8 was adopted by 35 votes to 9, with 8 abstentions.

44. Mr. SERGE (Congo), explaining his vote after the vote, welcomed the adoption of draft resolution L.8, given the fact that the use of mercenaries

had become an established factor in the destabilization of States and posed a threat to international peace and security. As the Special Rapporteur on that question had noted in paragraph 44 of his report (E/CN.4/1998/31), the active intervention of mercenaries had been a factor in the conflict in the Congo which had thwarted the attempts of the United Nations and the OAU to settle the conflict by peaceful means. In that regard, he informed the Commission that the Congolese Government had released all the captured mercenaries immediately after the cessation of hostilities.

45. Mr. CHATTY (Tunisia) said that, had the Tunisian delegation been present during the vote on draft resolution E/CN.4/1998/L.8, it would have voted in favour thereof.

46. Mr. MALGUINOV (Russian Federation) pointed out that, although the Russian delegation had voted for draft resolution E/CN.4/1998/L.4, it believed that the text of that resolution was overloaded with references to documents that did not always relate to the subject and some expressions did not give an exact idea of the aim and the role of the Middle East peace process. Although the Russian delegation had also voted for draft resolution E/CN.4/1998/L.8, it hoped that, at the Commission's fifty-fifth session, that question would be considered solely from the standpoint of human rights.

47. Mr. Gallegos Chiriboga (Ecuador) took the Chair.

INDIGENOUS ISSUES (agenda item 23) (continued) (E/CN.4/1998/11 and Add.1, 106 and Corr.1 and 107; E/CN.4/Sub.2/1997/14, 15 and 17 and Corr.1; A/52/509).

48. Mr. AMAT FORES (Cuba) commended the remarkable work that had been accomplished by the Sub-Commission's Working Group on Indigenous Populations which, in collaboration with indigenous representatives, had been analysing for the last 15 years the various aspects of the questions relating to indigenous populations and had been the driving force behind the proclamation of the International Decade of the World's Indigenous People and the preparation of a draft declaration on the rights of indigenous people. That text was particularly important since the only instruments that referred to those questions, namely the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, had proved inadequate to ensure the effective protection of the rights of indigenous people, not only because they were concerned primarily with the definition of individual rights but also because they had been adopted and proclaimed without the participation of those people. Their ineffectiveness was attested by the situation in which indigenous nations found themselves in various countries of the world. The case of the indigenous population of Catalina Island near California in the United States of America was only one of many examples perfectly illustrating the difference between the words and acts of the self-proclaimed defenders of human rights when there was a need to respect and protect the rights of other peoples subjected to their de facto jurisdiction.

49. It was impossible to compare the collective rights of indigenous people with the individual rights set forth in the instruments constituting the International Bill of Human Rights. For example, the right of those people to their ancestral lands was a collective right which had nothing to do with the non-indigenous concept of private property. Even the very concept of

indigenous people had caused numerous difficulties at the United Nations in view of the manner in which it had sometimes been abused. However, the Cuban delegation did not believe that it would be necessary or useful to define "indigenous people" in order to continue the work on the draft declaration. On the other hand, it seemed indispensable to continue the consideration of the problems with which indigenous people were faced as a direct result of the phenomenon of colonization which explained why those people were currently being forced to submit to the laws, traditions and cultures of the non-indigenous groups wielding power in the societies in which they lived. In that regard, the Cuban delegation regretted that so little progress had been achieved by the Commission's Working Group assigned to prepare the final version of the draft declaration on the rights of indigenous people in view of the precarious situation in which the vast majority of indigenous people lived and the absence, to all intents and purposes, of norms guaranteeing their rights and of appropriate mechanisms to ensure the exercise of those rights in view of the discrimination to which they were subjected. His delegation sincerely hoped that the few obstacles still impeding the completion of the Working Group's work would be overcome before the end of the Decade.

50. The Cuban delegation also supported the decision which the Sub-Commission had submitted to the Commission for approval, to the effect that the Working Group on Indigenous Populations should give attention to certain questions, which needed to be clarified, concerning the possibility of establishing a permanent forum for indigenous populations within the United Nations system. His delegation hoped that the Commission would approve that proposal and would not take a hasty decision concerning the establishment of that forum.

51. Mr. SIMAS MAGALHAES (Brazil) said that the rights of indigenous people in Brazil were guaranteed in the 1988 Constitution and in the National Plan for Human Rights, which was adopted in 1996. The Constitution, which regarded land and environment as essential requirements for the physical and cultural survival of indigenous people, recognized the "original rights" of the latter to their ancestral lands. In accordance with its constitutional obligations, the Brazilian Government was firmly resolved to protect the indigenous people against any acts of violence and to demarcate their lands, which constituted 11.13 per cent of the national territory. The demarcation process had progressed considerably in 1997 with the regularization of an additional 22 indigenous lands covering an area of 8.6 million hectares. In that way, Brazil had completed the demarcation of 54 per cent of all the indigenous lands recognized by the National Foundation for Indians (Funai). The recent establishment of the Brazilian Indigenous Council, composed of anthropologists and representatives of the indigenous groups living in the country, which was seeking to ensure full participation by indigenous people in the decisions concerning them, constituted further proof of the Government's commitment in that regard.

52. Brazil attached great importance to the multilateral debate on the rights, well-being and sustainable development of indigenous people and to the Commission's work on that question. In that regard, he welcomed the fact that the coordination of the activities undertaken in connection with the International Decade of the World's Indigenous People had been entrusted to the High Commissioner for Human Rights whose able guidance would certainly

help to overcome the difficulties impeding the achievement of the two principal aims of the Decade, namely the adoption of the declaration on the rights of indigenous people and the possible establishment of a permanent forum for indigenous populations. For the Working Group assigned to prepare the draft declaration, the main challenge would be to find a common platform on which all countries could agree in order to promote the recognition and enjoyment of the rights of indigenous populations while taking account of their particularities and of the historical and legal background that determined their relations with the national authorities. With regard to the permanent forum for indigenous populations, Brazil was aware that it would be rather premature to take a final decision. Further discussions should be held on a number of fundamental points, such as that forum's mandate, its functional hierarchy, its financing, its composition and its relationship with the Sub-Commission's Working Group on Indigenous Populations. For its part, Brazil believed that the definition of that forum's mandate would depend largely on the scope of the final text of the draft declaration. In view of the importance of the work undertaken by the Working Group, both in terms of standard-setting and in monitoring the situation, Brazil also believed that one possible solution might be to redefine the Working Group's mandate. Finally, regardless of whichever solution was envisaged, Governments should retain the primary responsibility for promoting initiatives in connection with the Decade.

53. Mr. PADILLA MENENDEZ (Guatemala) said that the need to protect and promote indigenous cultures had been recognized in his country only since the promulgation of the 1985 Constitution and it was at an even later stage, after the conclusion of the Accord on the Identity and Rights of Indigenous People, that the State had acknowledged that Guatemala was a multi-ethnic, multicultural and multilingual nation and had undertaken to carry out the reforms needed to take that into account. The Accord also emphasized the importance and the intrinsic value of the indigenous spirituality based on the vision of the world that had been adopted by the pre-Colombian Mayan civilization, the descendants of which constituted the majority of the indigenous population of Guatemala. The priority fields of action envisaged in the Accord included measures to combat the marginalization and discrimination to which the indigenous populations were subjected by establishing mechanisms to guarantee the full exercise of their cultural rights and strengthen their traditional institutions. The indigenous communities should also be involved more closely in the decisions concerning them which were taken by the joint commissions consisting of an equal number of representatives of the Government and of indigenous organizations. Joint commissions had already been established to prepare educational reform, to grant official status to indigenous languages and to conduct a survey of sacred places and land rights. The Brazilian Government, being aware that the construction of a democratic and pluralistic society based on tolerance, understanding and peace required an education policy adapted to the real situation in the country, was endeavouring to promote bilingual intercultural education. The Department of Bilingual Intercultural Education was operating in 12 of the country's 22 provinces and in 14 of the 21 languages that were spoken there.

54. The importance that Guatemala attached to the indigenous issue was attested by the fact that it had ratified the ILO Convention No. 169,

concerning indigenous and tribal peoples, that it had supported from the outset the idea of establishing a permanent forum for indigenous populations within the United Nations system and that it had participated in the second workshop on that question, which had been held at Santiago in Chile. Although the appropriateness of establishing such a forum was not in doubt, questions remained concerning its operation, its mandate, its composition and the procedures for participation therein. While the financial difficulties of the United Nations should not constitute an obstacle to its establishment, careful thought should be given to the question of how that forum would function if, for example, it were funded solely by unreliable voluntary contributions from Member States which could vary from one year to another. If, on the other hand, it were funded solely by appropriations from the regular budget, which had a tendency to decrease, care would have to be taken to make optimum use of the existing resources and avoid any duplication, which prompted questions concerning the relationship between the permanent forum and the Working Group on Indigenous Populations. With regard to participation, the Guatemalan delegation held the view that, in order to establish its legitimacy and its credibility, the permanent forum should consist of an equal number of governmental and indigenous representatives, like the joint commissions in Guatemala. At all events, Guatemala would support any existing or future mechanism designed to facilitate exchanges of views and the formulation of specific proposals for the achievement of rapid progress in the debate on all those questions.

55. Finally, the Guatemalan delegation had followed, with particular interest, the debates of the Commission's Working Group assigned to prepare the draft United Nations declaration on the rights of indigenous people, believing that the finalization of that instrument would make an important contribution to the International Decade of the World's Indigenous People. It called upon Governments, as well as indigenous organizations, to endeavour to reach a consensus. A declaration on questions of capital importance which had not been discussed and negotiated with the States that would be responsible for its application would be as useless as an empty declaration that did not reflect the concerns of indigenous people. In that regard, the Guatemalan delegation proposed the holding of informal meetings with academics and scientists in order to examine more calmly, in the light of anthropological, sociological and political theories, the concepts that had proved controversial within the Working Group.

56. Mr. Selebi (South Africa) resumed the Chair.

57. Mrs. CALLANGAN (Philippines) said that protection of the rights of indigenous peoples and the promotion of their welfare were fields of priority action for the Philippine Government. The national Constitution contained numerous provisions that recognized the rights of indigenous peoples. Those provisions had taken the form of laws, particularly the Comprehensive Agrarian Reform Law of 1988, the National Integrated Protected Areas System Law of 1992 and the Indigenous Peoples' Rights Law of 1997. The latter constituted a major contribution to the observance of the International Decade of the World's Indigenous People and to the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights and, at the same time, attested to the Philippine Government's commitment in that field. It covered the rights of indigenous peoples to their ancestral lands and resources,

self-governance and empowerment, protection of cultural identity, recognition of cultural diversity, community intellectual property rights, and rights in regard to religious and cultural ceremonies, archaeological and historical sites and access to biological and genetic resources. It also stipulated that indigenous peoples had the right to use their own legal system, their traditional institutions and mechanisms for the settlement of disputes, and other customary laws and practices, provided that they were compatible with the national legal system and with internationally recognized human rights. Finally, the Law provided for the establishment of a National Commission on Indigenous Peoples which would be responsible for the formulation and implementation of policies, plans and programmes to promote and protect the rights and well-being of indigenous peoples.

58. In order to promote the realization of those rights, the Government had incorporated them in its social reform agenda and in its programmes for environmental protection and sustainable development. The implementation of the various programmes for the benefit of indigenous peoples required huge resources and the Philippine Government was grateful to all the Governments and international and non-governmental organizations which had provided it with assistance with a view to their application.

59. Mr. CAMPBELL (Observer for Australia) said that his country was aware of the disadvantaged situation from which indigenous peoples were still suffering throughout the world, even in its own territory. In fact, the Australian Prime Minister had recognized the desire of the Aboriginal and Torres Strait Islander people to preserve their unique culture while reaching out to non-indigenous Australians to build a shared future in a spirit of reconciliation.

60. With the practical needs of its indigenous population foremost in mind, Australia continued to be encouraged by the discussion topics that the Sub-Commission's Working Group on Indigenous Populations had been pursuing at each of its annual sessions. His country also believed that the draft declaration on the rights of indigenous peoples required careful consideration by indigenous peoples, Governments and other interested parties. While noting the progress that had been achieved at the last meeting, in November 1997, of the Commission's Working Group assigned to study that question, Australia was aware that much still remained to be done in order to provide the international community with a text that would have practical significance for the world's indigenous peoples. Australia continued to support the International Decade of the World's Indigenous People with its theme "Partnership in action", believing that the Decade should be based on true partnership which would foster mutually beneficial relationships between indigenous peoples and the States in which they lived and between those peoples and the international community. His country was convinced that the activities undertaken in connection with the Decade would continue to help all Australians to gain a better appreciation of the depth and diversity of Aboriginal and Torres Strait Islander cultures, histories, aspirations and concerns, as well as their contributions to the richness of Australian society. The Decade could make a lasting contribution to the lives of indigenous peoples throughout the world by bringing about practical improvements in their human rights situation and in their economic, social and cultural well-being.

61. Mr. LOAYZA (Observer for Bolivia) said that the Bolivian Government had adopted a new overall economic and social development plan for 1997-2002, the main aim of which was to combat poverty within the framework of sustainable and comprehensive development in which indigenous peoples would be the primary actors. That plan made provision for various measures to boost the economic, institutional and social development of indigenous peoples, facilitate their access to social services, strengthen their links with the national community, reaffirm their own cultural identity and promote their participation in political life so that they could fully exercise all their rights. Those initiatives proved the importance that the Bolivian Government attached to indigenous issues and also explained why it fully supported the establishment of a permanent forum for indigenous populations, which should constitute a focal point for discussion, consultation and collaboration between the Governments concerned, the United Nations system and indigenous peoples.

62. The Bolivian Government fully supported the draft United Nations declaration on the rights of indigenous peoples, which was compatible with its thoughts on that matter. In fact, Bolivia was a unitary, multi-ethnic and multicultural State which recognized the particularities of indigenous peoples and guaranteed their exercise of their socio-economic and cultural rights.

63. In conclusion, he thanked the Voluntary Fund for the International Decade of the World's Indigenous People for funding the first course on indigenous law and the International Seminar on the Administration of Justice, which would be held during the present year.

64. Mr. VIGNY (Observer for Switzerland) said that the indigenous peoples, who were the most exposed to natural disasters and to the assaults of modern civilization, expected that the United Nations Decade that had been devoted to them would produce tangible results in at least two fields. The first concerned the establishment of a permanent forum at an appropriate level of the Economic and Social Council. That window on the world would enable indigenous peoples to uphold, vis-à-vis the international community, their civil, cultural, economic, political and social rights and to coordinate their actions in all the fields of concern to them within the United Nations system.

65. The second aim was the adoption of a draft declaration on the rights of indigenous peoples which, although based on the International Bill of Human Rights, would provide the additional details needed to ensure adequate protection. In fact, the existing instruments were not always sufficient to guarantee the physical and cultural survival of indigenous peoples. The consideration of the draft was still progressing too slowly and it was essential to speed up the pace and finally succeed in transcending the ongoing polemics around the sterile question of a definition of the concept of "indigenous people" or around expressions such as "people" or "self-determination" in order to adopt a more pragmatic approach.

66. Like human rights in general, those of indigenous peoples were universal, indivisible and interdependent. The declaration on the rights of indigenous peoples should be substantive and precise while remaining clear and intelligible. It should have pedagogical value and be accessible to all. The effective and rapid realization of the rights to be included in that declaration was essential for indigenous peoples, whose collective survival

necessitated their integration, as opposed to their assimilation, in a manner that respected their differences. Like minorities, they should be adequately involved in the decision-making process at the local and national levels. That was a prerequisite for the application of the principle of subsidiarity, under which local decisions did not need to be standardized or centralized at the national level.

67. That division of jurisdiction was also a characteristic of the political system of the Swiss Confederation, the people of which was actually composed of several peoples, with 26 cantons. In some cases, the Federal Constitution even allowed the cantons to maintain direct relations with foreign, local or regional authorities and conclude trans-border agreements to regulate matters of good-neighbourliness, for example. Similar local autonomy could be granted to indigenous peoples, each case being viewed in the light of its own merits.

68. Mrs. BOUVIER (Minority Rights Group) said that, with regard to the situation in western New Guinea (which Indonesia called Irian Jaya), the armed conflict between the main guerrilla movement (OPM), which contested the legality of the incorporation of western New Guinea in Indonesia in 1969, and the Indonesian armed forces was unlikely to end insofar as neither of the two parties was able to win complete control of the territory. Hence, only an amicable and just solution could put an end to the violations of human rights and the suffering caused by that conflict.

69. Moreover, the environment and lifestyle, and particularly the land ownership system of the indigenous peoples of that region, were being severely threatened not only by the massive influx of immigrants arriving from other islands as part of the Indonesian Government's transmigration plan but also by the exploitation of the natural resources by mining and logging companies. For that reason, the Minority Rights Group was urging the Indonesian Government to immediately cease its transmigration policy and to take into account the aspirations and needs of the indigenous populations of western New Guinea, particularly by offering equitable compensation to those populations for the land of which they had been dispossessed if it could not be returned to them. The Minority Rights Group requested the Commission on Human Rights to raise these concerns with the Indonesian Government.

70. The Minority Rights Group also requested the Commission to adopt, without amendment, the draft declaration on the rights of indigenous peoples which had been submitted to it by the Sub-Commission. It also unreservedly supported the establishment of a permanent forum for indigenous peoples and encouraged the Commission to continue its endeavours to that end with the full participation of the representatives of indigenous peoples.

71. Mrs. RUOKKANEN (Saami Council), speaking on behalf of the Saami people of Finland, Norway, Russia and Sweden, congratulated the Commission's Working Group assigned to formulate a draft declaration on the rights of indigenous peoples on the work that it had accomplished during the last three years. The Saami Council hoped that the new articles on which consensus seemed to have been achieved would be adopted at the next session of the Working Group and urged the Commission to adopt the entire draft declaration in its present form, without any changes, amendments or deletions.

72. With regard to the establishment of a permanent forum for indigenous peoples, the Saami Council believed that the Commission should formulate a specific proposal to that end for possible submission to the Economic and Social Council. The Commission should also assign a special ad hoc group to formulate a proposal concerning the mandate, structure and establishment of that forum for submission to its fifty-fifth session so that it could subsequently transmit the proposal to the Economic and Social Council for consideration and adoption. That ad hoc group should be authorized to consider all issues of concern to indigenous peoples, such as cultural, civil, political, social and economic rights as well as issues relating to development, education and the environment.

73. The Saami Council also urged the Commission to consider the appointment of a special rapporteur to report to it on measures taken by States to solve the problems faced by indigenous peoples, on initiatives taken to facilitate dialogue between indigenous peoples and Governments and, finally, on the achievement of the aims of the International Decade of the World's Indigenous Peoples. In that regard, the High Commissioner for Human Rights, in her capacity as Coordinator of the Decade, could organize an international meeting in 1999 for the purpose of assessing the progress achieved during the first five years of the Decade and proposing a revised plan of action for the remaining part of the Decade.

74. In conclusion, the Saami Council requested the High Commissioner for Human Rights and the Member States to endeavour to ensure that indigenous issues were given all due attention and that appropriate financial and human resources were allocated to them within the Office of the High Commissioner for Human Rights.

75. Mrs. CASTANEDA (Movement against Racism and for Friendship among Peoples) said that, in Mexico, the human rights of the indigenous peoples were being systematically violated by the Government through the army, the police, the judicial system and the administration.

76. In Chiapas, for example, even during the International Decade of the World's Indigenous People, deaths were occurring for lack of primary health care and many people were surviving only through the aid provided by the Mexican Red Cross. Moreover, the paramilitary groups were terrorizing the civilian population, as could be seen from what happened on 22 December 1997 at Acteal, where 45 persons, including children and pregnant women, were murdered. Similar massacres had been committed in other States, particularly the States of Guerrero and Oaxaca. The situation in Chiapas was attributable to the fact that the Government had always supported the landowners to the detriment of the indigenous communities which, in a State that produced 60 per cent of Mexico's electric power, did not even enjoy that basic service. The National Indigenous Congress was currently engaged in a peaceful struggle to ensure that the Government applied the San Andres Agreements on indigenous rights and culture which it had concluded with the Zapatista National Liberation Army (EZLN) on 16 February 1996.

77. The National Indigenous Congress was demanding that the Government recognize the fundamental rights of the indigenous peoples, that the Federal Congress adopt no legislation without the approval of the EZLN and the

indigenous peoples, that the Indian peoples be recognized in the Constitution as bodies corporate and that the federal executive authority apply the San Andres Agreements and withdraw the Mexican army and its paramilitary groups from the indigenous communities. Finally, the National Indigenous Congress supported the constitutional reform proposal that had been made by COCOPA.

78. Mr. LITTLECHILD (Pax Christi International) said that, as had been noted by the Committee on the Elimination of Racial Discrimination in its general recommendation XXIII (51) concerning the rights of indigenous peoples, the latter were being deprived of their human rights. Some of the States represented in the Commission's Working Group assigned to prepare a draft declaration on the rights of indigenous peoples were still opposing inclusion of the right of indigenous peoples to self-determination in that declaration on the ground that it would encourage secession. However, the indigenous peoples had frequently repeated their desire to exercise their right of self-determination under the conditions set forth in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. That Declaration, which the General Assembly of the United Nations had adopted by consensus, struck a balance between the right of self-determination and respect for the territorial integrity of any sovereign State.

79. Pax Christi International called upon Canada, Australia, New Zealand and the United States of America to support the draft declaration on the rights of indigenous peoples in its present form.

80. Mr. TOWNEY (Transnational Radical Party) welcomed the adoption by the Working Group assigned to prepare a draft declaration on the rights of indigenous peoples of two articles in that draft which had been worded in terms identical to those that appeared in the text adopted by the Sub-Commission. He also welcomed the emerging consensus on several other articles, particularly that concerning the right of self-determination, which applied to all indigenous peoples without discrimination. He stressed the need for a meaningful dialogue on the principles before attempting to agree on a text. In that regard, the proposals made by a group consisting of Canada, Australia, New Zealand and the United States seemed premature.

81. The indigenous organizations were also concerned at the inclusion at the end of the Working Group's report (E/CN.4/1998/106) of a series of annexes containing detailed proposals concerning the amendments to be made to the text adopted by the Sub-Commission. According to the report, those proposals, which had been submitted by some Governments, were to be discussed at a later date. Neither the New South Wales Aboriginal Land Council of Australia nor the other organizations represented at the Working Group's 1997 session were aware of any such agreement. Most of the indigenous organizations felt that those proposed amendments were premature and that their inclusion as an annex to the report placed disproportionate emphasis on the views of a small group of countries which, apparently, were not entering into dialogue with indigenous peoples in the same spirit as other delegations.

82. He then pointed out that many countries were introducing political and legislative reforms in response to the aspirations of indigenous peoples in

regard to the exercise of universally recognized human rights and fundamental freedoms. For example, for the last 20 years, Australia had been endeavouring to remedy the consequences of a system which, for more than two centuries, had legalized the dispossession and destruction of indigenous societies. In fact, the High Court had ruled that the Australian common law recognized pre-existing indigenous rights to land, which was consistent with the principles contained in the draft declaration. However, due to a political backlash, the rights granted to indigenous peoples in Australia were once again being threatened. In particular, there was talk of repealing the provisions of Australia's Race Discrimination Act. That regressive measure would affect Australia's overall position on human rights in general and the rights of indigenous peoples in particular.

83. Finally, the Transnational Radical Party supported the proposal that the Commission should establish a Working Group to consider ways and means for the possible establishment by the Economic and Social Council of a permanent forum for indigenous peoples. It also shared the concerns expressed by other delegations concerning the consequences of the Multilateral Agreement on Investment, which had been proposed by OECD. In that regard, it suggested that the Sub-Commission should be requested to consider, at its next session, the implications of that Agreement on human rights and to duly inform the Commission thereof.

84. Mrs. YAMBERLA (International Organization for the Development of Freedom of Education - OIDEL) said that the Commission should do its utmost to ensure the rapid establishment of a permanent forum for indigenous peoples and the adoption by the General Assembly of the draft United Nations declaration on the rights of indigenous peoples, which constituted the minimum instrument needed to guarantee the rights of indigenous peoples.

85. In many countries, measures were also being taken in favour of indigenous people. With regard to Ecuador, OIDEL hoped that the Constituent National Assembly would give favourable consideration to the proposal of the Confederation of Indigenous Nationalities of Ecuador (CONAIE) to the effect that Ecuador should designate itself as a multinational and unitary State. Such recognition would make it easier to combat the gross violations of the rights of the indigenous peoples. In the Pastaza region, paramilitary groups, probably assigned by the Tripetrol and Digicon enterprises to defend their interests, were threatening and attacking members of the Organization of Indigenous Peoples of Pastaza (OPIP). Arrest warrants had been issued against 14 leading members of that Organization for having defended the environment and the social and cultural integrity of the region. In the province of Imbabura, three members of the indigenous community were currently being prosecuted for having protested peacefully against the implementation of a mining project by the Japanese company Bishimetals and the State enterprise Codigem, which could have serious consequences for the environment and the lifestyle of the indigenous population. OIDEL appealed to the non-governmental organizations defending human rights and the environment to consider that problem.

86. Mr. WANG MIN (China), speaking in exercise of the right of reply, regretted that the positive atmosphere in which the Commission's debates had been conducted since the beginning of the session, by virtue of the concerted

efforts of all the delegations, had been disrupted by guest speakers from some countries who, during their statements before the Commission, had seen fit to make irresponsible comments on the human rights situation in China. That attitude ran counter to the Chairman's appeal for a "calm and dignified" session.

87. He reaffirmed that dialogue and cooperation were the only correct way to promote and protect human rights. He expressed the hope that the few countries which had opted for confrontation would renounce it and abandon their antagonistic behaviour towards other countries.

The meeting rose at 5.55 p.m.